IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.991 of 2006
Date of Decision : 07.08.2006

Gurnam Singh and others .....Appellants

versus

Hardev Singh .....Respondent

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.B.B.S.Sobti, Advocate for the appellants.
Mr.Sunil Chadha, Advocate for the respondents.

-.-

JUDGMENT

HEMANT GUPTA, J. (Oral)

The defendants are in second appeal aggrieved from the judgment and decree passed by the First Appellate Court, whereby the suit for injunction filed by the plaintiff in respect of his possession over the portion shown as `red' in the site plan, was decreed.

It is the case of the plaintiff that he has purchased land vide different sale deeds dated 26.6.1981 and two sale deeds dated 3.1.1983. After purchase of the land, he has raised construction of one garage and two rooms, whereas, other portion is being used as court yard for tethering the cattle and for keeping the house hold articles.

The defendants have denied the averments made by the plaintiff and asserted that, in fact, defendant No.1 purchase the portion of the land in dispute from defendant Nos.4 to 6 vide sale deeds dated 14.11.1995 and 23.11.1995 and, therefore, defendant No.1 is in actual physical possession of the said portion.

The learned trial Court dismissed the suit, but the learned First Appellate Court found that though the plaintiff has purchased the land measuring 264.68 square yards or 2382 square feet, but he has reflected possession over the area 2496 square feet which is more than the area purchased by him. Defendant Gurnam Singh, who appeared as DW-6 has admitted that the area shown `red' in the site plan, Exhibit P-4 is in possession of Hardev Singh plaintiff. It has been found by the learned First Appellate Court that the plaintiff is a co-sharer and in established possession, therefore, the plaintiff is entitled to protect his possession subsequent to partition of joint land. It is the case of the appellants that in fact, the defendant is illiterate person and the site plan has not been explained to the witness and, therefore, the admission is not clear and categorical which can be used against the appellants. Learned counsel for the appellants has also vehemently argued that Hardev Singh while appearing as PW-1 has admitted the possession of Gurnam Singh in his testimony, therefore, the learned First Appellate Court has committed illegality and irregularity while ignoring the admissions of Hardev Singh in respect of possession of Gurnam Singh.

With the assistance of learned counsel for the appellants, I have perused the statement of PW-1 Hardev Singh. The admissions regarding possession of Gurnam Singh are not clear and categorical. He has deposed that it is correct that Darshan Singh, Kulwant Singh and Harbans Singh were in possession of the disputed land and that vide sale deeds, the possession was given to Gurnam Singh etc. On the basis of said statement, it is sought to be inferred that it is the appellants who are in possession of

the suit land. However, it may be noticed that such statement in respect of possession of Gurnam Singh is in the past tense. Therefore, it cannot be said that Gurnam Singh continues to be in possession of the suit land when the suit for injunction was filed.

It has been rightly found by the learned First Appellate Court that the plaintiff is in established possession of the disputed property and as a co-sharer in exclusive possession of part of the join land. In view of the said findings, it is open to the parties to seek partition of the suit land so as to claim exclusive possession of the share of the land purchased by them.

Thus, I do not find any illegality or irregularity in the finding recorded by the learned First Appellate Court which may give rise to any substantial question of law in second appeal. Consequently, the present appeal is dismissed.

07-08-2007 **(HEMANT GUPTA)**
*mohinder **JUDGE**